

1 industry.

2 Q And how did you take that comment?

3 A I took it as -- My understanding
4 was that he was saying that "Don't expect
5 business as usual. Your life is going to be
6 complicated." Basically I understood him to
7 be in my words sort of a not so thinly veiled
8 threat that we were going to have to deal with
9 issues going forward with the cable industry
10 that we hadn't had to deal with before.

11 Q Now why do you remember this
12 conversation so clearly, Mr. Tagliabue?

13 A Well, this was a very important
14 negotiation. Comcast is a major company, well
15 run. We have been very serious about trying
16 to get something done.

17 As I said, it was innovative. It
18 was different. It would have created a
19 partnership of a type that we didn't otherwise
20 have in television. We spent a lot of time on
21 it. We had really done a lot of analysis and
22 had concluded that it was not going to work.

1 It was not ultimately going to be an alignment
2 of interest between them and us.

3 And I had tried to develop a
4 positive relationship with Mr. Roberts. I
5 think we did have a positive relationship and
6 I just know at the end, I remember at the end,
7 we came away with a different view of what the
8 world was going to be in the future.

9 Q Have you spoken to Mr. Roberts
10 since that time?

11 A I don't believe I have. I might
12 have seen him in the past someplace, but I
13 don't believe I've spoken to him other than to
14 perhaps say hello.

15 MR. PHILLIPS: Now, Mr. Tagliabue,
16 Your Honor, I would like to show Mr. Tagliabue
17 what's been premarked as Exhibit 214 which is
18 his written testimony.

19 (Whereupon, the document referred
20 to was marked as Enterprises
21 Exhibit No. 214 for
22 identification.)

1 JUDGE SIPPEL: Good idea. This
2 has been identified as ENT No. 214. I have it
3 and it's the written testimony of Paul
4 Tagliabue with signature subscription
5 underneath under penalty of perjury.

6 BY MR. PHILLIPS:

7 Q Mr. Tagliabue, I have Exhibit 214
8 in front of you. Can you identify it for me?

9 A Yes, this is my written testimony
10 that I prepared and signed for presentation in
11 this proceeding.

12 MR. PHILLIPS: Your Honor, we
13 would move the admission of this written
14 testimony.

15 MR. CARROLL: No objection.

16 JUDGE SIPPEL: It's in. It's in
17 as No. 214 for Enterprises.

18 (The document referred to having
19 been previously marked for
20 identification as Enterprises
21 Exhibit No. 214, was received in
22 evidence.)

1 MR. PHILLIPS: Thank you, Mr.
2 Tagliabue. I have no further questions, Your
3 Honor.

4 JUDGE SIPPEL: Very well. Mr.
5 Carroll, are you going to be the cross
6 examiner here?

7 MR. CARROLL: I am indeed, Your
8 Honor.

9 JUDGE SIPPEL: The witness is
10 tended.

11 MR. CARROLL: Thank you very much.

12 CROSS EXAMINATION

13 BY MR. CARROLL:

14 Q Mr. Tagliabue, good morning. You
15 and I met about two weeks ago in my office for
16 a deposition. Do you remember?

17 A Yes, I do.

18 Q Good to see you again. I want to
19 focus on your written testimony, basically,
20 the testimony you gave in opening court here
21 with Mr. Phillips. It was intended to be a
22 summary of your written testimony that you

1 presented. Is that right?

2 A I would say it was to be an
3 elaboration of my written testimony.

4 Q Okay. Your written testimony is
5 Exhibit 214 and why don't you pull it right in
6 front of you there because we're going to go
7 through this pretty carefully I think. And
8 you have five paragraphs, a single page. I
9 want to congratulate you. This is most
10 condense, efficient submission of testimony or
11 paper in the case so far.

12 Let me start on paragraph five.

13 A I would say I would call it
14 concise.

15 Q Concise. Even better. Paragraph
16 five and let's -- I'm going to read this out
17 loud and you follow along with me. Your
18 testimony is "Shortly after I retired from my
19 position as commissioner, Comcast took
20 retaliatory steps by publicly announcing its
21 decision to drop the NFL Network from a basic
22 tier on which it had been previously been

1 carried and place it on a premium sports tier
2 that was available to far fewer of Comcast
3 subscribers." Have I read it correctly?

4 A Yes.

5 Q Okay. First of all, the phrase
6 that you have in your testimony, "basic tier,"
7 that's a mistake, isn't it?

8 A No.

9 Q What tier was Comcast carrying NFL
10 Network under the contract you signed with
11 them in 2004?

12 A My understanding is that they were
13 carrying it on a tier that got broad
14 distribution.

15 Q Do you know the name of the tier?

16 A No.

17 Q Do you know the difference between
18 analog and digital tiers, for example?

19 A I know the difference between
20 analog technology and digital technology. I'm
21 not sure I know the difference in terms of
22 distribution between analog tiers and digital

1 tiers.

2 Q Have you had --

3 A We had discussions with Mr.
4 Roberts at one point about whether this
5 network could just be carried on a digital
6 tier and my recollection was that at that time
7 the idea was that the digital tier or a
8 digital tier might go into as many as 45
9 million homes in some foreseeable period of
10 time. But that was a different kind of
11 concept altogether.

12 Q Right. And I'm not talking about
13 that different concept. You signed a contract
14 with my client in 2004, correct?

15 A Correct. The League did --

16 Q Okay, and under that contract --
17 Pardon me?

18 A The League did or the NFL Network
19 did. I didn't.

20 Q Well, you knew it and you
21 authorized it, right?

22 A Yes.

1 Q Okay, and Mr. Hawkins was an
2 individual you worked with fairly closely.

3 A Yes.

4 Q And he's testified here the other
5 day you were familiar with the fact that Mr.
6 Hawkins and other lawyers were signing up a
7 contract with my client in 2004, right?

8 A Yes.

9 Q Okay, and under that contract you
10 understood there was an agreement for Comcast
11 to distribute the NFL Network at some level,
12 right?

13 A I'm not sure I did have that
14 understanding of that contract that was signed
15 in 2004. From my perspective what I had
16 negotiated in that context with Mr. Roberts
17 was two things. One was an opportunity to talk
18 to us about Sunday Ticket and the other was an
19 opportunity to talk to us about what came to
20 be the Eight Game Package.

21 Much of the other material in that
22 contract I don't have any recollection of

1 negotiating. It was negotiated by someone for
2 the League and according to me. But I don't
3 have a first-hand recollection of everything
4 that is and/or might be in that contract.

5 Q Okay. Fair enough. I think what
6 you've said is you did focus in 2004 when the
7 contract was signed and the fact that the NFL
8 was promising Comcast that it would give
9 Comcast the chance to negotiate for Sunday
10 Ticket or for this Eight Game Package. Is
11 that right?

12 A That's what Mr. Roberts and I had
13 talked about in return for which another
14 element of it was that we were going to do an
15 agreement with them where they could
16 immediately start carrying a Video on Demand
17 service that would feature highlights of NFL
18 games.

19 Q Okay. But also in exchange, this
20 was a carriage agreement, you understood that
21 there was some commitment Comcast was making
22 in 2004 to carry NFL Network starting in 2004,

1 right?

2 A I'm not sure I did have that
3 understanding at that time.

4 Q Well, for 2004-2005, for those two
5 years, did you think Comcast was distributing
6 the NFL Network?

7 A I think I thought that -- I guess
8 I thought they were carrying the NFL Network
9 which at that time did not have games, that
10 they were carrying the NFL Network's what was
11 then what I call ancillary programming. I
12 guess that was my understanding.

13 Q Okay.

14 A But again, I don't think I even
15 saw this contract until a month ago.

16 Q Did you think they were carrying
17 the NFL Network, Comcast, on a basic tier as
18 you put in your testimony there?

19 A I don't know what tier. I don't
20 know how they were distributing it back in
21 '04. My understanding was that after I left
22 the League they were carrying it on a basic

1 tier, what I call a basic tier, a widely
2 distributed tier, and then had decided to take
3 it off that tier.

4 Q So maybe there's some confusion.

5 A No. Again, most of your questions
6 have had to do with 2004. This refers to 2006
7 or 2007.

8 Q No, sir.

9 A I'm not sure there is confusion.

10 Q Well, no sir. Your testimony
11 here, you're alleging that in 2006 Comcast
12 changed the distribution it had been carrying
13 before and moved to a tier, correct? That's
14 what your testimony alleges.

15 A Whether it's in 2006 or 2007 I
16 don't know.

17 Q Okay.

18 A I had left the League.

19 Q And you alleged that what Comcast
20 did in 2006 after you left the League was drop
21 the network from your language "a basic tier."
22 And I'm trying to understand. Do you know

1 even what tier they were carrying the network
2 at before they moved it?

3 A I've already said I don't know how
4 you define it in technical terms. I know it
5 was a widely distributed tier. I had read
6 materials saying they were distributing it
7 widely in the Chicago area and then they were
8 no longer distributing it widely in the
9 Chicago area.

10 Q Now let me make this -- See if I
11 can do this in short form. When I was at your
12 deposition, I showed you the contract a few
13 weeks ago and I think you were quite candid in
14 saying "I'd never looked at it in 2004 and had
15 only looked at it with the lawyers recently."
16 Correct?

17 A Yes, I think just said that a few
18 minutes ago.

19 Q You did. Do you remember from now
20 seeing the contract that the contract doesn't
21 say Comcast will carry the NFL Network on a
22 basic tier? It says Comcast will carry it on

1 D2, Digital 2.

2 A I still haven't read that part of
3 the contract.

4 Q Still til to this day you haven't
5 looked at that? Then how can you put
6 testimony in that alleges that in 2006 my
7 client dropped you from a basic tier?

8 MR. PHILLIPS: Objection, Your
9 Honor. Argumentative.

10 THE WITNESS: I just said I --

11 JUDGE SIPPEL: Wait a minute.
12 This is cross examination. I'll permit it up
13 to a point.

14 THE WITNESS: I had read that and
15 I had been told that.

16 BY MR. CARROLL:

17 Q But maybe you're mistaken.

18 A If the people who told me that
19 were mistaken and the people who wrote it in
20 the newspapers were mistaken and the fans who
21 complained about it were mistaken, then I'm
22 mistaken. But I don't think I'm mistaken.

1 Q Do you agree that the contract you
2 signed governs what level of distribution
3 Comcast was supposed to provide you in 2004,
4 2005 and 2006?

5 A I agree that contracts control
6 distribution arrangements. I'm not sure that
7 these distribution arrangements that we're
8 talking about here are controlled entirely by
9 whatever contract you sign in 2004. It was my
10 understanding that there were subsequent
11 contracts entered into in my final weeks as
12 commissioner and maybe there were some other
13 contracts entered into after I left as
14 commissioner.

15 Q Do you know of any new contracts
16 other than the one I showed you in my
17 deposition a few weeks ago?

18 A I have seen again in working with
19 the lawyers in the last month or so contracts,
20 offers of contracts, that I believe were in
21 2006.

22 Q But you don't know.

1 A Show them to me. I wasn't
2 involved with them.

3 Q Let me try it this way. Mr.
4 Hawkins was here two days ago and I questioned
5 him and again you worked with Mr. Hawkins.
6 You know him to be one of the NFL lawyers and
7 also a strategic business advisor, right?

8 A Yes.

9 Q Okay. If Mr. Hawkins testified in
10 open court that the requirement for Comcast
11 for carriage was D2, Digital 2, then that's
12 what it was supposed to be. You have no
13 reason to disagree with Mr. Hawkins, would
14 you?

15 A Not normally.

16 Q Okay. Now in the same paragraph
17 of your written statement after you make this
18 reference to Comcast dropping the network from
19 your words were "basic tier" you say, "on
20 which it had previously been carried and
21 place it on a premium sports tier that was
22 available to far fewer Comcast subscribers."

1 The phrase was "available to far fewer Comcast
2 subscribers." That's not true either, is it?

3 A Well, I believe it is.

4 Q Isn't it a fact that --

5 A That was my understanding that I
6 acquired after I left when -- I left in
7 September of '06 and I think for the '06
8 season my understanding was that these NFL
9 games were distributed more broadly by Comcast
10 than they were beginning with the 2007 season.

11 Q But your paragraph we're reading
12 says "Shortly after you retired..." Your
13 retirement was when again in 2006?

14 A August 31 of 2006.

15 Q Okay. So when you say "shortly
16 after" there are you meaning to refer to
17 September/October?

18 A No, I'm referring to a matter of
19 months.

20 Q Months. So within months of when
21 you retired, your understanding was that
22 Comcast moved the NFL Network somewhere that

1 it was available to far fewer subscribers. Is
2 that right?

3 A Yes.

4 Q And did somebody tell you that?

5 A Yes.

6 Q Who told you that?

7 A Commissioner Goodell, Mr. Hawkins
8 and others.

9 Q Mr. Hawkins told you that. Now do
10 you know in fact that the programming remains
11 available to every single one of Comcast
12 subscribers? It's just on now on a basis that
13 if they want they have to pay for it.

14 A That's my understanding I guess.

15 Q Well, but it's still available to
16 them.

17 A I guess it's available.

18 Q Okay.

19 A It's not available in the way I
20 used the word "available" and it's not
21 available -- it's not widely distributed the
22 way Mr. Roberts and I were talking about

1 widely distributive services versus narrowly
2 distributed services.

3 Q But when you and Mr. Roberts
4 talked about that you decided not to do that
5 deal with Mr. Roberts for wide distribution.

6 A No, we did a deal with Mr. Roberts
7 for a very wide distribution.

8 Q In early '06, the phone call you
9 just told us you had you called to give my
10 client the bad news that they'd lost out and
11 you weren't going to give them the games and
12 it was those games that you had the
13 conversations about broad distribution, right?

14 A No, we had talked about broad
15 distribution of the NFL Network whether, well,
16 this Eight Game Package, whether it was on the
17 Versus network or whether it was on the NFL
18 Network. Our understanding was that the games
19 would be widely distributed by Comcast.

20 Q When the games were made
21 available, let's do this. Let's do it this
22 way. After you called Mr. Roberts and gave

1 him the bad news and say, "We're not going to
2 do the deal with you in '06" are you with me?

3 A Yes.

4 Q Okay. A few months later, do you
5 know whether the NFL offered to add live games
6 to the existing NFL Network?

7 A I don't understand your question.

8 Q You don't understand?

9 A No.

10 Q Do you know whether later in '06
11 after you disappointed Mr. Roberts by telling
12 him we're going to keep the games to
13 ourselves, do you know whether later in that
14 year there was any kind of offer that NFL made
15 to add these eight games to the NFL Network
16 for telecast as the NFL Network?

17 A I told Mr. Roberts in that phone
18 conversation that these eight games were going
19 to be on the NFL Network.

20 Q Okay. So you had already decided
21 that. Do you know whether that offer was
22 formally made months later by others at the

1 NFL who sent an offer letter over?

2 A An offer letter to whom? Comcast?

3 Q Comcast. Do you know that?

4 A I said a few minutes ago that I've

5 seen some correspondence and some contractual

6 documents in preparing for this proceeding

7 that I had never seen before.

8 Q All right.

9 A But they seemed to fit the

10 description that you're talking about here.

11 Q Okay. But you didn't know that

12 back at that time. You've seen it more

13 recently.

14 A Correct.

15 Q Can we just agree with this much?

16 Was it your understanding that when the games

17 were put on NFL Network Comcast's obligation

18 for those games was to carry them on the terms

19 specified in the '04 contract?

20 A That was not my understanding.

21 Q So if Mr. Hawkins has explained

22 that precisely two days ago, are you

1 disagreeing or are you're just not sure?

2 A I have no way of knowing whether
3 I'm disagreeing or not because I don't know
4 what he said.

5 Q Are you aware of some other
6 contract other than the `04 contract?

7 A I'm aware now of contracts that
8 were apparently negotiated in 2006 when I was
9 not involved, when I was heavily involved in
10 the selection of my successor and getting
11 ready to go out the door.

12 Q Let me just ask you and we can
13 leave -- I don't mean to belabor this because
14 Mr. Hawkins has testified about this and if
15 you don't know things, that's okay. Do you
16 know --

17 A I don't know anything about his
18 testimony. I'm sure of that.

19 Q Do you know whether the offer for
20 the games, the eight games, that was made
21 later in `06 was an offer under the `04
22 contract to add a surcharge under that

1 contract?

2 A I said before. I don't know
3 whether an offer was made. I was not involved
4 with whatever those conversations were. I've
5 seen papers relating to it. I don't even know
6 some of the people who were writing the
7 papers. They apparently work for the League.
8 I don't know them. I was not involved.

9 Q Okay. So you weren't involved.

10 JUDGE SIPPEL: The involvement,
11 you're not involved in the '06 negotiations.

12 THE WITNESS: Yes. After I had --

13 JUDGE SIPPEL: Or the '04
14 negotiations.

15 THE WITNESS: After I had this
16 conversation with Mr. Roberts in late January
17 and I told him that the package would be on
18 the NFL Network rather than on the joint
19 venture network that we had been discussing
20 senior executives in the League and their
21 staff, our staff, went ahead and worked on
22 arrangements for distribution of the NFL

1 Network. I was not involved in that. I was
2 involved with other things, principally
3 getting a collective bargaining agreement done
4 with the union and announcing my retirement
5 which I think I announced on March 20th, about
6 six weeks after I had this conversation with
7 Mr. Roberts.

8 So though I've seen, the lawyers
9 asked me about a month ago, "Have you seen
10 this document?" "Have you seen this
11 document?" "Have you seen this document?"
12 All of which were from 2006 after the end of
13 January, my answer was no. I had never seen
14 those before.

15 JUDGE SIPPEL: All right.

16 THE WITNESS: They were being
17 worked on by other people for the League, but
18 I was not involved in that.

19 JUDGE SIPPEL: You were totally
20 out of the loop? They weren't bringing
21 questions by you or a draft or anything like
22 that?

1 THE WITNESS: In terms of those
2 documents, those exchanges, I was out of the
3 loop. It was being handled by senior
4 executives including Mr. Bornstein who was the
5 head of the Network.

6 JUDGE SIPPEL: And did you tell
7 them that? Did you say, "Look. I have these
8 other things to do. I don't want to be
9 bothered with that stuff"? And they didn't
10 say "Well, Commissioner, we would like you to
11 take a look." "No, I'm not doing that." I
12 mean how -- what were the dynamics of pulling
13 out of something like that?

14 THE WITNESS: That dynamics were
15 that we had an understanding that --

16 JUDGE SIPPEL: "We" being?

17 THE WITNESS: We being the NFL and
18 with Comcast that there was going to be broad
19 distribution of these games. That was left to
20 our senior executives to work out.

21 JUDGE SIPPEL: Thank you.

22 MR. CARROLL: I'm getting copies

1 of an exhibit, Your Honor. It will take a
2 second. I didn't anticipate we would have to
3 use it. But let me just see if this is right.

4 BY MR. CARROLL:

5 Q So whatever offer was made to
6 Comcast later in '06 for the games to be
7 broadcast by Comcast, you don't know what the
8 terms were and you don't even know whether
9 that offer was governed by the old 2004
10 contract. You don't know that.

11 A That's basically correct, yes.

12 Q Okay. And going back to your
13 paragraph five of your testimony I think we've
14 now established when you say "was available"
15 you didn't mean that it wasn't available at
16 all. You meant that it was available but now
17 on a different basis that might require some
18 monthly payment. Is that right?

19 A I thought what I said was clear,
20 but if you're going to create different
21 meanings for the word "available" I'm not
22 quite sure what you're asking.